

1 notice of proposed rulemaking.

2 The staff made a couple of significant  
3 recommendations. One of which there were certain broadcast  
4 interests that were situated in this band and the staff  
5 said, it might be too difficult to relocate them, so they  
6 should probably be left there.

7 QUESTION: Mr. Lane, may I ask you a question that  
8 isn't really explained in either brief, at least to the  
9 point where I could understand it. I was trying to  
10 visualize what it meant to be moved from one end of the  
11 spectrum, one part of the spectrum to another. And since,  
12 if I understand it correctly, there's no economic  
13 consequences because the new occupier has to pay your  
14 clients for all the costs of moving, whatever the hell that  
15 means. I can't figure out what moving the spectrum means.  
16 I am thinking of boxes and so on.

17 I know we all hate to move, but I couldn't figure  
18 out what it was.

19 [Laughter.]

20 QUESTION: And it didn't, I even had some  
21 difficulty understanding where the injury was. If you're  
22 moved from one part of the spectrum to another part of the  
23 spectrum and all your costs have to be paid by the movant--  
24 you're the movee--what's, what's this case about?

25 MR. LANE: Okay. That's a good question. Let me

1 start this way. You're going from, in this case, simply  
2 from 2 gigahertz all the way up to 6 gigahertz, that's 2  
3 billion cycles up to 6 billion cycles. It's not the same.  
4 It's not the same, it can't be made the same.

5 QUESTION: Mr. Lane, that was not apparent. You  
6 have to assume that our knowledge of progression along the  
7 megahertz continuum is not what your's is. Would you  
8 explain why it makes any difference?

9 MR. LANE: Because there are different operating  
10 conditions when you move up. Let me give you a simple  
11 analogy.

12 Suppose this Court was ordered to vacate this  
13 Court, and this courthouse, that a commercial developer  
14 would come in, redevelop this and give you an identical  
15 courthouse, just what you have today, in another part of  
16 this city. And you'd be forced to do this.

17 First, the Court would have to deal with the  
18 situation of negotiating, would have to get experts in,  
19 would have to make sure that the plans and specs and,  
20 furthermore--

21 QUESTION: But, wait, counsel, apart from that, is  
22 there anything more to it, other than the inconvenience--

23 MR. LANE: Yes, there is.

24 QUESTION: You have got to get to the point  
25 quickly because you are running out of time. For example,

1 would we be moved to a place where we had no parking or it  
2 was difficult to get there, or the light was bad, or we  
3 couldn't get a telephone service? What are you talking  
4 about?

5 MR. LANE: When you move--

6 QUESTION: I will tell you why it's important  
7 because if you told the Chief Judge, who is desperately  
8 trying to get an expansion of our building, that his costs  
9 are taken care of, he doesn't care about anything else.

10 MR. LANE: But his operating costs, if you had to  
11 put in a heating and ventilating system in a new building  
12 that costs three times--

13 QUESTION: Well, what does that have to do with  
14 moving on the--no, Mr. Lane, tell us why there's an  
15 inconvenience in moving along the spectrum.

16 MR. LANE: Any move is inconvenient but, secondly  
17 if you have to go to a less desirable band in the spectrum--

18 QUESTION: Why is it less desirable? You didn't  
19 explain that.

20 MR. LANE: Because it costs more to operate up  
21 there.

22 QUESTION: The operating costs.

23 MR. LANE: Yes, the operating costs.

24 QUESTION: Well, you never said that in your  
25 brief, never at any point in the brief.

1 MR. LANE: Oh, I believe we have, we have made  
2 that point. And as a matter of fact--

3 QUESTION: Where, where?

4 QUESTION: Where is that in the record that the  
5 operating costs are appreciably different?

6 MR. LANE: Well, it runs throughout the record.

7 QUESTION: Well, if it does then you ought to be  
8 able to pick a page randomly and it should be there, but I  
9 don't remember it. I don't doubt that it is there, but none  
10 of us are catching it. In other words, that would be the  
11 kind of thing that we would immediately look for and find if  
12 you're making an argument that, look, if you move us to a  
13 different band, increasing--

14 MR. LANE: Well, it's a three-fold increase in  
15 power when you move up from 2 to 6.

16 QUESTION: But if the FCC--I have just got to get  
17 this point--if the FCC and I will certainly ask the FCC,  
18 counsel--says that part of the agreement on any mandatory  
19 moving would be the relocation facilities must be fully  
20 comparable to the ones being replaced, would that not  
21 include the same level of operating costs?

22 MR. LANE: No. There's no provision for future  
23 operating costs. And, and--

24 QUESTION: Well, what is fully comparable mean?

25 MR. LANE: We don't know. And we're very

1 concerned. See, let me get to the point, we are not opposed  
2 to moving, we just don't want to move with a gun to our  
3 head. We're not opposed to PCS. We're not opposed to new  
4 technologies. And the Commission found that we had special  
5 operational and economic considerations that warranted  
6 protection all the way through.

7 QUESTION: You want an optional move if somebody  
8 can make a deal with somebody else and it's nice, but if you  
9 just don't feel like moving, you can stay where you are? I  
10 mean is that what you think is the right solution here?

11 MR. LANE: I think our solution is we will  
12 cooperate. We have not said that we wouldn't negotiate. If  
13 we can get a better deal and you can get a better courthouse  
14 you will go.

15 If we can get a better--

16 QUESTION: In other words, you want the leverage  
17 to negotiate with someone else, but--

18 MR. LANE: The Commission gave us that.

19 QUESTION: Yes, you want that leverage and you can  
20 charge certain things for the privilege of somebody  
21 occupying your place in the spectrum and moving somewhere  
22 else. So you have lost the opportunity costs to charge  
23 these people, is that what this case is about?

24 MR. LANE: Essentially, yes.

25 QUESTION: Well, then why should we care? Why

1 should we care? Where is it written in the statutes that  
2 you are dealing with that you are entitled to the  
3 opportunity costs to charge somebody to move to a different  
4 place on the spectrum?

5 MR. LANE: The Commission gave us that and based  
6 on findings that it was important that we had special--

7 QUESTION: But they also said that they could  
8 revisit the issue. They didn't give you anything fixed in  
9 stone. They said they can come back.

10 MR. LANE: Oh, yes, certainly. And I'm not--the  
11 Commission has broad discretion. In these cases where they  
12 say that for technical reasons and using their technical  
13 expertise that they need a record, they need a technical  
14 record.

15 QUESTION: But the FCC shouldn't even consider  
16 that. If you came before the FCC and said that look, we  
17 understand we are going to move, you want us to move to a  
18 different place on the spectrum, we understand you say our  
19 facilities have to be fully comparable--which, to me, seems  
20 like it covers operating costs and we will, therefore, be  
21 immunized against any diminution in our quality. But what  
22 you are taking away from us is the ability to charge, in  
23 economic terms, rents from the new people who want to come  
24 in so we lose our monopoly rent-gouging opportunity and it's  
25 unfair of you to take that away from us.

1           If you made that argument to the FCC and they  
2           accepted it they would be reversed in a heartbeat.

3           MR. LANE: We never said we were going to try to  
4           gouge anyone, Your Honor.

5           QUESTION: No, but I'm trying to say that the only  
6           interest that you are suggesting here is the interest in  
7           charging somebody for your place in the spectrum.

8           MR. LANE: We are saying that we can share and if  
9           it comes to the point where we can't share, we will  
10          negotiate. But the Commission found that we--there were  
11          special considerations when you are dealing with these types  
12          of systems. These were elaborate, sophisticated systems.  
13          They found that we were deserving, they have reaffirmed  
14          that. And the parties in this case, no one ever challenged  
15          it. No one ever--

16          QUESTION: They don't challenge the significance  
17          of it now and they say you will get protected moves. You  
18          have a longer period of time and--

19          MR. LANE: But they were willing to live with it.  
20          As a matter of fact, the--

21          QUESTION: But, counsel, that just can't fly in  
22          the world in which we operate. Agencies change their mind  
23          all the time. You don't have anything fixed in stone.

24          MR. LANE: But they have to do it based on a  
25          record and have a rational explanation. They don't have it

1 here. They just are on their own motion took 180 degrees in  
2 the opposite direction.

3 QUESTION: They got some comments in after--they  
4 got some new comments in after the first order came out  
5 suggesting that the interference problem was more  
6 significant and than they were willing to credit initially.  
7 And they simply said--and why can't an agency say, why can't  
8 decision makers say, we're looking--let's assume it's  
9 exactly the same information--why can't they look at it  
10 again and say, we simply didn't read it correctly the first  
11 time?

12 MR. LANE: They could.

13 QUESTION: That's what they did. That's what  
14 you're arguing.

15 MR. LANE: Your Honor, they didn't. They looked  
16 at that and they reaffirmed it and what they did, their  
17 response was to cut down the exemption so that it just  
18 applied to police, fire and emergency medical which changed  
19 the universe that was affected.

20 They reaffirmed it.

21 QUESTION: Well, of course, you have a first rule  
22 and order in October 16, 1992. And then you got a second  
23 one August 13, 1992. And then a third one on August 13,  
24 1992, and then you have responses to the third one by APC  
25 and Cox.



1 MR. LANE: Right.

2 QUESTION: And they raise the points which lead  
3 the Commission to say, oh, gosh, we should have thought  
4 harder about that. Now, you argue that APC and Cox's new  
5 points were really raised before, right?

6 MR. LANE: No. APC and--

7 QUESTION: But it doesn't matter if they raised  
8 them in a different way and it caused the FCC to think  
9 harder about it and they said to themselves, gee, you know,  
10 we are, there's not going to be room at this end of the  
11 spectrum for the new guys, the new high-technology people as  
12 well as your clients.

13 MR. LANE: But they accepted it. They said that  
14 it presented, look at the Joint Appendix at 330, there is  
15 Cox saying that this represents--when the Commission had  
16 reaffirmed the Public Safety exemption and cut it back to  
17 the bare essentials--they said this represents a fair  
18 balance and is supported by public policy and they said this  
19 protects--

20 QUESTION: That's a fair proposition but it  
21 doesn't really matter what exactly Cox's position and APC's  
22 position was in the response to the third report and order.  
23 The point is that they raised some notions which led the  
24 Commission to think harder about what they'd done.

25 MR. LANE: But the Commission didn't say that.

1 That was counsel's brief that said, oh, way back then, they  
2 began to be concerned, worried. That's just, that's just  
3 counsel rhetoric.

4 QUESTION: Well, it's obvious the Commission was  
5 trying to come out with a right balance on this all along.

6 MR. LANE: Yes, and they came out the right way.  
7 We accepted it and so did Cox, so did UTAM here, did not  
8 object to it, and so did APC, they accepted it. When they  
9 say that the decision recognizes that microwave incumbents  
10 providing services that directly and predominantly protect  
11 lives and property cannot risk any possibility of service  
12 disruption or inconvenience. They--

13 QUESTION: Counsel, we come back to the original  
14 point. What's the disruption that you will face that will  
15 adversely affect the public services being offered? And to  
16 this moment I haven't the faintest idea what you're talking  
17 about.

18 MR. LANE: I'm sorry but--

19 QUESTION: You mentioned operating costs, but you  
20 cite us to nothing. I accept that as a possibility without  
21 a citation to this moment. What else?

22 MR. LANE: People have to take away from their  
23 Public Safety jobs and sit down and work and negotiate and  
24 try to and move. That is a big, big undertaking.

25 Secondly, they have--I have talked about

1 additional--

2 QUESTION: In other words, the way to handle that,  
3 you move, you leave town and have your wife handle  
4 it. [Laughter.]

5 MR. LANE: It ain't that easy.

6 QUESTION: Isn't it fair to say, before you go on  
7 to answer to the Chief Judge's question, I want you to, but  
8 with respect to the operating costs you would certainly have  
9 an opportunity down the line, if you ended up with higher  
10 operating costs to claim that that's not fully comparable  
11 within the meaning of the FCC's order, is that correct?

12 MR. LANE: I don't know where you go down the line  
13 once you have one of these deals and move.

14 QUESTION: After a year--it's in the policy--  
15 within one year the Public Safety operation may relocate  
16 back to its original facilities with one year and remain  
17 there until complete equivalency is attained.

18 MR. LANE: But that's a lawsuit and an enormous  
19 dispute.

20 QUESTION: Well, yes, I know we are talking  
21 transactional costs. I understand that.

22 QUESTION: But it is a rightness question, isn't  
23 it? If the FCC is promising you fully comparable and you're  
24 worried your operating costs may be higher and the FCC said,  
25 well, that's silly we said fully comparable, fully

1 comparable means fully comparable. If they have a problem  
2 with their operating costs being higher it's not fully  
3 comparable and, therefore, they would be entitled to  
4 compensation.

5 MR. LANE: Your Honor, excuse me for interrupting  
6 but they have already started a proceeding to cut back on  
7 these and they have already had a proceeding. It is in our  
8 brief, it's referred to, there's a proceeding already to cut  
9 back on these protections.

10 See, you start off with the fact that the  
11 Commission--

12 QUESTION: Forgive me for interrupting on that  
13 because you were answering Judge Edwards and I just wanted  
14 to nail down my understanding of fully comparable. You were  
15 giving him the reasons why you thought there was disruption.  
16 You started with operating costs and you and then you had  
17 psychological disruptions when you moved. Now, what else do  
18 you have?

19 QUESTION: I mean is this about--and I don't mean  
20 this facetiously--is this about the fact that we ought to  
21 recognize that local governments just don't operate  
22 smoothly?

23 And any big problem is much worse for them than in  
24 private industry, is that what this case is about?

25 MR. LANE: I think that's part of it. I think

1 that is. They have multi-layered authorities. You know,  
2 the guy running the police system can't sell the police  
3 system, he can't negotiate it. It has to go through--

4 QUESTION: Well, I say that's hard for us to  
5 understand because we don't see that problem in D.C. We run  
6 efficiently but--

7 [Laughter.]

8 QUESTION: --but let me give you a little time.

9 MR. LANE: The Commission found that we have  
10 special problems and special needs and also don't forget  
11 this is the highest priority user of the spectrum. And,  
12 therefore, the Commission has a special duty and the  
13 Commission was exercising that duty and all of a sudden--  
14 because a new Chairman comes in and a whole new ball game  
15 where--you are auctioning this stuff off at \$7.7 billion for  
16 only 60 megahertz of this, all of a sudden they forget about  
17 those special considerations and the high priority.

18 QUESTION: Okay, your time has expired, counsel.  
19 I will give you some time on rebuttal.

20 Thank you.

21 MR. LANE: Thank you.

22 ORAL ARGUMENT OF JAMES M. CARR, ESQ.

23 ON BEHALF OF RESPONDENT

24 MR. CARR: Thank you, and may it please the Court.

25 QUESTION: Why don't you start off, counsel,

1 telling us, where is it that the Commission clearly  
2 identifies something as new to them in this record that  
3 causes them to change their mind?

4 What is it that the Commission has found that you  
5 point to in the record that now causes them to see the  
6 light?

7 MR. CARR: Well, the Commission in the memorandum-

8 -

9 QUESTION: Well, let me tell you what prompts the  
10 question.

11 MR. CARR: Sure.

12 QUESTION: Some of the comments that you cite are  
13 patently ridiculous because they are applauding the rule  
14 that has now been removed. So it is pretty silly when I  
15 look to those commentators and those commentators are  
16 saying, we think the compromise struck previously is  
17 terrific. And you are citing them as the Commission's  
18 justification for a new rule, that can't be the basis. If  
19 it is then you should lose pretty quickly.

20 So what is the basis?

21 MR. CARR: Well, I think, Your Honor, that the  
22 comments that the Commission did cite pointed out that there  
23 were some potential problems.

24 QUESTION: Yes, but if they end up saying this is  
25 a great solution, I don't know how you can rely on those

1 kind of comments.

2 MR. CARR: Well, certainly Roman Apple did not  
3 regard the exemption of Public Safety licensees as a great  
4 solution. They perceived that there could be serious  
5 problems with the development of unlicensed of PCS devices  
6 unless--

7 QUESTION: Well, but that can't be your best shot.  
8 That someone perceived something and the Commission says,  
9 well, but one of the commentators perceived something, we  
10 don't know whether their perception is right. What is it,  
11 what is the Commission looking at?

12 Because 2-of-3 or 3-of-4 of the commentators end  
13 up saying it is fine. So you have one you're citing, is  
14 that it, and what does that one point to as evidence or as  
15 something upon which the Commission can base a reasonable  
16 prediction which would cause them to do what they have done?

17 MR. CARR: Well, I think even Cox and APC who said  
18 that it was a reasonable balance, nonetheless, said that  
19 they were already, they were going to have some difficulties  
20 in accommodating Public Safety licensees and offering PCS.

21 And so it wasn't, while they didn't come right out  
22 and advocate a change in the balance, they were  
23 acknowledging that there would be some difficulties.

24 And the Commission, I think, also points out in  
25 the memorandum of opinion and order that--

1 QUESTION: Would be or could be?

2 MR. CARR: Could be problematic.

3 QUESTION: Yes.

4 MR. CARR: And I think the Commission also points  
5 out in the memorandum of opinion and order that it was, at  
6 that point, well accepted that there could not be spectrum  
7 sharing in the sense that APCO is now suggesting. That is,  
8 there could not be a situation where two services could be  
9 offered at the same time on the same frequency in the same  
10 geographic area.

11 QUESTION: Well, in that regard, let me ask you,  
12 this is a mechanical thing, again, like moving boxes. As I  
13 understand the policy it is that they have got five years,  
14 one year to negotiate for substitution. And whoever takes  
15 their place on the spectrum has to provide comparable  
16 facilities and pay all of the relocation costs.

17 And two questions. One, suppose the end of the  
18 five-years comes and the Public Safety people says, that's  
19 not good enough. What you're offering me is no good. I  
20 mean it doesn't satisfy. Is the FCC the arbitrator there as  
21 to whether or not--I just want to know how it works--is the  
22 FCC the arbitrator and says, yes, it is, or no, it isn't.

23 MR. CARR: Yes.

24 QUESTION: Okay, that answers that.

25 The next part of the question is, you say that if



1 after a year the Public Safety is in their new home and they  
2 don't like their new home, the roof leaks or that sort of  
3 thing, then they can go back to their old place on the  
4 spectrum, is that correct?

5 MR. CARR: Yes, that's correct.

6 QUESTION: So that sounds like--I am trying to put  
7 that in place with your rationale of the Commission that we  
8 have, everybody's got to get off this, I mean all the old  
9 people have to get off the spectrum in order to make room  
10 eventually for this newly emerging technology. But you  
11 could have two instances, could you or am I not  
12 understanding technologically?

13 One, somebody might get off and have to come back  
14 on again. Probably not too many people but it is a  
15 possibility. The second, could you have a situation where  
16 nobody makes an offer to these guys, of the Public Safety--

17 MR. CARR: Absolutely.

18 QUESTION: --Public Safety people? They just,  
19 nobody comes along and makes an offer which satisfies the  
20 policy and so they stay there indefinitely?

21 MR. CARR: That is absolutely a possibility.

22 QUESTION: How does that fit in with the  
23 Commission's vision of this spectrum being completely taken  
24 up with the new technologies?

25 MR. CARR: Well, the Court should keep in mind

1 that relocation under the Commission's plan will occur only  
2 if the new technology provider, the PCS provider, actually  
3 needs the spectrum.

4 QUESTION: Right, it's a market thing, in other  
5 words?

6 MR. CARR: That's right. Now, the Commission is  
7 projecting that PCS is going to attract a lot of interest,  
8 there's going to be a considerable amount of demand for it,  
9 and that eventually the PCS providers will take up all of  
10 the spectrum that has been allocated to PCS.

11 But if the Commission is wrong about that  
12 projection, there is always the possibility that the Public  
13 Safety incumbents will never have to move because the PCS  
14 doesn't develop

15 QUESTION: What about the point that Mr. Lane  
16 makes that they're facing higher operating costs at the new  
17 place along the spectrum?

18 MR. CARR: Well, Your Honor, it's not clear to me  
19 where that is in the record. They haven't identified it,  
20 and

21 QUESTION: It could be though, it could be,  
22 couldn't it?

23 QUESTION: Suppose it were true? Would it be  
24 fully comparable if it were higher operating costs? You  
25 promised full comparability.

1 QUESTION: I suspect your answer is you would  
2 rather not answer it, because I think that's going to be a  
3 heck of a fighting issue down the line?

4 MR. CARR: Well, frankly, it isn't entirely clear.  
5 What I can tell you, Judge Edwards, though is that the  
6 comparable facilities have been defined by the Commission,  
7 at least as a benchmark, at Joint Appendix 229, in the third  
8 report and order.

9 The Commission talks about how, if a case is  
10 brought to the Commission for a resolution the dispute about  
11 what is comparable we will use as our benchmark that  
12 comparable facilities must be equal to or superior to  
13 existing facilities.

14 QUESTION: Doesn't that necessarily imply that it  
15 couldn't be higher operating costs? I mean I don't mean to  
16 make counsel's argument for him in the next proceeding, but  
17 doesn't that necessarily imply that?

18 MR. CARR: Well, that's certainly one way of  
19 reading it, Your Honor, I'm not sure if I--

20 QUESTION: It didn't occur to you until today,  
21 though, did it?

22 MR. CARR: Well, frankly, Your Honor, it's because  
23 the operating costs issue wasn't raised in the briefs. This  
24 is the first time I've seen it and the Court seems mystified  
25 as to the argument as well. I haven't seen it.

1 QUESTION: You didn't actually explain in your  
2 brief what was at stake on the move either. I mean, frankly  
3 reading these briefs I thought maybe there was something  
4 wrong with me--everybody seems to assume there is some  
5 consequence, some injury in being moved and we can't figure  
6 out what it is.

7 MR. CARR: Well, actually, Your Honor, I don't  
8 think that the Commission's position at this point is that  
9 there will be any injury. They--

10 QUESTION: Well, then why is there Article III  
11 standing if there is no injury?

12 MR. CARR: I think they, at least, have standing  
13 to argue that the Commission's judgment in determining that  
14 Service will not be disrupted is incorrect.

15 QUESTION: I'm not sure you are familiar with  
16 Article III, they have to have an injury to have set. It's  
17 puzzling. An injury does not come about because the FCC is  
18 dumb. There has to have some consequence--

19 MR. CARR: A lot of petitioners would beg to  
20 differ with you on that, Your Honor, but--

21 QUESTION: No, you can take that as a given. But  
22 there has to be some consequences that flow from the FCC  
23 being dumb or wrong or something. Somebody's got to be  
24 hurt.

25 MR. CARR: Fair enough.

1 QUESTION: I couldn't find what the injury was  
2 here but I guess there is something.

3 QUESTION: Well, what about the fact that if they  
4 have a place under the old order, they had a place which was  
5 their place on the spectrum or whatever it was, and now they  
6 are being told that you have to move if somebody comes up  
7 with as good a place some place else. And you got to  
8 negotiate until you get that but you have to move if that  
9 happens.

10 I suppose you could say that the fact that you are  
11 forced to enter into that negotiation and forced to move if  
12 the other people come up with a comparable facility takes  
13 away something, namely your right to just stay where you  
14 are. I'm saying that's an argument. I'm not saying you buy  
15 it or not but I assume that's their argument.

16 MR. CARR: That's correct, Your Honor, that's a  
17 possible argument with respect to standing in terms of there  
18 is some sort of injury but--

19 QUESTION: Well, there's certainly transactional  
20 costs for the cities, they are substantial, just because of  
21 the way the cities operate.

22 MR. CARR: There are transactional costs.

23 QUESTION: To have to undo where they are and redo  
24 this, he is--he's got to be right on this, that there are  
25 going to be substantial undertaking for these cities.

1 QUESTION: And you don't reimburse, this policy  
2 doesn't reimburse transactional costs. You don't pay the  
3 salaries of the city people to come and go and negotiate the  
4 new facility?

5 MR. CARR: No, I don't believe that would be.

6 QUESTION: You don't require the new spectrum and  
7 all of that?

8 MR. CARR: No.

9 QUESTION: The people who are now going to be  
10 told, here's what you have to do and no one ever anticipated  
11 it. You have got to put this proposal together, it has got  
12 to go to the city council, it has got to be negotiated, you  
13 got to think about what the alternatives are, etc., etc.,  
14 etc.

15 MR. CARR: That's right, because--

16 QUESTION: That's a major undertaking.

17 MR. CARR: The Commission's judgment though is  
18 that those burdens would not be enough to disrupt Public  
19 Safety Services.

20 QUESTION: No, we understand that, counsel, I  
21 understand your position but I'm very troubled, one judge,  
22 that nobody in this case explained what the injury was and  
23 in Article III terms, you didn't have to say Article III,  
24 explain what the injury was. You just sort of assumed it  
25 which is not adequate.

1 And I'm dubious as to what the injury is now. If  
2 you went back and thought to yourself do we have an injury?  
3 Wouldn't you have said, hey, there's not even an injury in  
4 this case. It's a little late now.

5 MR. CARR: I understand that.

6 QUESTION: But it certainly troubles me. There  
7 may be transactional costs, I don't know what the devil they  
8 are.

9 QUESTION: Why did the Commission assume in the  
10 first place if there was nothing involved with moving them,  
11 why did they give them an exemption in the first place?  
12 Obviously thought there was a gain.

13 MR. CARR: Quite frankly, Your Honor, it's not  
14 entirely clear. When the Commission--

15 QUESTION: What about the monopoly rents argument  
16 or question I raised, did you follow that?

17 Did you understand what I was talking about?

18 MR. CARR: By monopoly rents, I'm sorry, Your  
19 Honor--

20 QUESTION: You didn't? That's an economic term,  
21 and the point is that if they have a place on the spectrum  
22 which the Government has awarded them and somebody else  
23 wants it and even if they are entitled to exactly comparable  
24 space from their point of view, in another spot, they want  
25 to be in a position to charge the new person a fee or a

1 cost, something for moving. Now, that's called a monopoly  
2 rent.

3 MR. CARR: Right.

4 QUESTION: Which under the FCC would not be, in my  
5 judgment, entitled to award them. Not clearly entitled  
6 anyway. It wouldn't be in the public interest. But that's  
7 something that very rationally they might want.

8 MR. CARR: That's true and it is still something  
9 that under the transition plan they could negotiate before  
10 they got to the point of mandatory relocation.

11 QUESTION: Counsel, I'm afraid you're not with me  
12 on this, because I'm suggesting that it wouldn't even be  
13 legitimate for the FCC to recognize that, if it were true.  
14 Although that may be their underlying rationale of what they  
15 really--you are absolutely right. There's got to be some  
16 reason why they're fighting, some reason why they're  
17 litigating. But it may not be an injury which is  
18 recognizable under this statute.

19 MR. CARR: I think that is correct, Your Honor.

20 QUESTION: Which means they wouldn't have  
21 prudential standing even if they had Article III standing.

22 QUESTION: So if I follow this conversation it is  
23 that you think, you don't know, maybe transactional costs,  
24 you know, the move might be covered but if somebody says, by  
25 God, I got this spot and you're going to pay through the



1    teeth to get this spot.  Since the Government originally  
2    gave you that spot to begin with that wouldn't be a  
3    legitimate--

4               MR. CARR:  No.  Well, they're clearly not entitled  
5    to that spot on the spectrum and--

6               QUESTION:  I just wanted to make sure I understood  
7    it.

8               MR. CARR:  --and now, of course, there are these  
9    negotiation periods before mandatory relocation--

10              QUESTION:  I understand.

11              MR. CARR:  --comes into play where the parties can  
12    negotiate their own deal.

13              QUESTION:  Well, why don't you put the PCS  
14    operator some place else.

15              MR. CARR:  Well, that's a good question, Your  
16    Honor, I think if you review the OET study it explains the  
17    difficulties with putting the PCS providers at any other  
18    point in the spectrum.  This was regarded as the best  
19    spectrum that was--

20              QUESTION:  Why is it the best?

21              MR. CARR:  Well, if it was a question of putting  
22    the PCS providers above the three gigahertz bands, for  
23    example, the places where the Public Safety incumbents and  
24    the other incumbents would be relocated, it's my  
25    understanding that those frequencies are simply not good for